

Association of Gallatin Agricultural Irrigators

Testimony in Support of SB 465

Please support SB 465

SB 465 is necessary to provide certainty and reliability to landowners whose property is adjacent to a river as well as those entities who own any type of structure that is located below the low water mark of a river that is navigable for title purposes based on the equal footing doctrine.

In tax year 2008, Department of Revenue used the navigable rivers list prepared by DNRC to remove property that they determined was located below the low water mark from tax assessment. This was done based on DOR's interpretation of the PPL v. Montana District Court decision. This decision is still on appeal to the Montana Supreme Court. The decision essentially said that any property located below the low water mark of the Missouri, Madison, and Clark Fork Rivers is school trust land and the trust must be compensated for any use of the bed of these rivers.

DOR ran a computer system to determine which acreage was not taxable. Based on the Equal Footing Doctrine and 70-16-201, MCA this would be the property that is located below the low water mark of a river that is navigable for title purposes – or in simple terms – commercially navigable at the time of statehood. As you can see from the attached map, this approach took away more property from adjacent landowners than is below the low water mark. Especially since this aerial photography was flown in June – certainly not the low water season in the Gallatin.

When DOR removed property from tax assessment they assigned the removed acreage to the highest valued use within the tract. While this certainly reduced taxes for landowners adjacent to rivers, it had other consequences. For AGAI members, a majority of the acreage removed was classified as irrigated land. Irrigated property is more valuable than grazing property when determining property value and any relationship with mortgages, etc.

The determination of whether or not a river is navigable for title purposes can only be determined by a court of competent jurisdiction – this is not an administrative decision. It is critical that the Constitutional right of a water right holder to exercise their water right (Article IX, section 3) is balanced with the Constitutional provision requiring that school trust lands receive full market value for any use of the property (Article X, section 11).

This is a fairly simple bill to address the fact that a state agency (DOR) applied a District Court decision on a statewide basis while the case was under appeal.

Please support SB 465 so that Montana's landowners do not have any more property taken from them that is legally theirs.

EXHIBIT OF GEOCODE -0000
SHOWING AREA EXCLUDED BETWEEN APPROX.
LOW WATER MARKS OF GALLATIN RIVER.

1 inch = 500 feet

0 250 500

LEGEND



DIGITIZED RIVER



PARCEL BOUNDARIES

10-1010-32-30101-0000

REVENUE

This map illustrates the extensive Missouri River drainage basin in Montana. The Missouri River is the central feature, flowing northward from the Flathead region. Key tributaries shown include the Flathead River, Kootenai River, Clark Fork of the Columbia, Snake River, Yellowstone River, and Big Horn River. The map also depicts the Flathead National Forest and several towns, including Missoula, Great Falls, and Helena. The river's path is clearly marked, showing its course through the state and its eventual exit into Canada.

The navigable waterways depicted on this map are those for which the State of Montana currently asserts ownership pursuant to the Federal Equal Footing Doctrine and 70-1-202, MCA. For more information, contact the Montana Department of Natural Resources and Conservation, Trust Land Management Division at 406-444-2074, December 3, 2007 edition.